

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES R. WALSH, *Trustee*, KENT R.  
ROCKWELL,

Plaintiff(s),

09cv1133

**ELECTRONICALLY FILED**

v.

MATTHEW D'EMILIO, ESQ.,

Defendant(s).

**ORDER OF COURT**

AND NOW, this 26<sup>th</sup> day of February, 2010, after careful consideration of plaintiffs' "Complaint Pursuant to 11 U.S.C. § 542 (a) and (b) for Turnover of Property to the Estate and for Ancillary Relief under Pennsylvania State Law Including Money Damages and an Accounting" (Doc. No. 1), defendant's Motion to Dismiss (Doc. No. 10) and plaintiffs' Response in Opposition to Motion to Dismiss (Doc. No. 12), it appears to this Court that this is a matter involving a core proceeding in a bankruptcy proceeding, that the matter began in Bankruptcy Court, and that the matter should be resolved in Bankruptcy Court, which is intimately familiar with the underlying issues and the players to the dispute.

It appears from the pleadings that plaintiffs initially intended to file such an Adversary Complaint with the Bankruptcy Court in the first place (but chose not to do so for tactical reasons), and that defendant obviously does not want the case to continue in District Court. The Court will grant the Motion to Dismiss, therefore, but without prejudice to plaintiffs filing the Complaint Pursuant to 11 U.S.C. § 542 (a) and (b) for Turnover of Property to the Estate and for Ancillary Relief under Pennsylvania State Law Including Money Damages and an Accounting as an Adversary Complaint in the Bankruptcy Court.

Accordingly, defendant's Motion to Dismiss (Doc. No. 10) is GRANTED and plaintiffs' Complaint is HEREBY DISMISSED, without prejudice to plaintiffs filing an Adversary Complaint in the Bankruptcy Court for the Western District of Pennsylvania on or before March 31, 2010. In the interim, any applicable statute of limitations shall be tolled.

s/ Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

cc: All Registered ECF Counsel and Parties